IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HUNGER FREE AMERICA, INC., *Plaintiff*, v. BROOKE L. ROLLINS, et al., *Defendants*.	Case No. 1:25-cv-1815 (JEB)

REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION

Cormac A. Early (DC Bar No. 1033835)
Allison M. Zieve (DC Bar No. 424786)
Adina H. Rosenbaum (DC Bar No. 490928)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Plaintiff

July 6, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

Regulations

INTRODUCTION

The School Lunch Act requires Defendants to enter into a contract for clearinghouse services with a "nongovernmental organization" that has "helped combat hunger for at least 10 years" and is "knowledgeable concerning Federal nutrition programs." 42 U.S.C. § 1769g(b). On May 20, 2025, Defendant U.S. Department of Agriculture (USDA) allowed an admittedly successful contract with Plaintiff Hunger Free America to expire with no explanation and no replacement, leaving the National Hunger Hotline on life support and violating the statutory mandate to "maintain" the clearinghouse services for vulnerable Americans. Now, USDA has now made clear that it will withhold statutorily mandated funding for the Hotline indefinitely while it conducts entirely optional "market research" to try to find a for-profit business to take over the money-losing public-interest work of running the clearinghouse services previously (and successfully) run by nonprofit organizations.

While seeking to continue its vitally important work combatting hunger, Hunger Free America has no desire to burden the Court with unnecessary emergency litigation. If Defendants' breezy assurance that this case is well on the way to being moot were remotely credible, and if USDA were currently seeking bid proposals from nongovernmental organizations, Hunger Free America would welcome that news and prepare its bid for the next clearinghouse contract. But the facts belie defense counsel's contention: USDA is in ongoing and unexplained breach of its statutory duty to establish and maintain the clearinghouse services through a nongovernmental contractor; it has no definite plan to come into compliance; there is no reason that USDA could not have begun the formal solicitation process for a new contract at any time before or after the old contract lapsed on May 20; USDA is seeking information only from telemarketers, despite the absence of evidence that any for-profit telemarketing business has the requisite ten years' experience combating hunger or familiarity with federal nutrition programs; it is seeking

information only from for-profit businesses when the operating costs for the Hotline for the past year exceeded the amount of federal funding by over $420,000; and it will not even commit to allowing nonprofits like Hunger Free America or various other qualified nonprofit organizations to bid for the contract. In short, USDA's efforts to shoo this case away do not square with the facts, and Plaintiff is amply justified in seeking emergency relief.

ARGUMENT

I. Plaintiff is likely to succeed on the merits

Plaintiff's opening brief demonstrated that this Court has jurisdiction, that Plaintiff has standing, and that Plaintiff is likely to succeed on the merits because it challenges final agency action that is arbitrary, capricious, and contrary to law. Aside from a single paragraph challenging this Court's jurisdiction under the Tucker Act, *see* ECF 10 at 7–8, USDA does not contest Plaintiff's arguments. Instead, USDA's defense hinges on a "Sources Sought Notice" that it published on June 24—four days after Hunger Free America moved for a preliminary injunction. That Notice expressly commits USDA to nothing and further delays the awarding of a new clearinghouse contract to a qualified nongovernmental organization to no discernable purpose.

A. The Sources Sought Notice does not resolve Plaintiff's claims.

USDA argues that "there is no further relief that Plaintiff seeks" and therefore that "this motion is moot (or at a minimum, well on its way to being moot)." ECF 10 at 5. Not so. A "case becomes moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome,'" *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2008) (quoting *Larsen v. U.S. Navy*, 525 F.3d 1, 3 (D.C. Cir. 2008)), such as when "the court can provide no effective remedy because a party has already 'obtained all the relief that [it has] sought,'" *id.* (quoting *Monzillo v. Biller*, 735 F.2d 1465, 1459 (D.C. Cir. 1984) (alteration in original)). That has not happened here.

Plaintiff brought this case, and the pending preliminary injunction motion, to compel USDA to "enter into a contract with a nongovernmental organization" to establish and maintain the clearinghouse services as required by 42 U.S.C. § 1769g. First Amended Complaint, ECF 8 at 9; *see also* Proposed Order, ECF 6-3. USDA's declarant claims that, "*as evidenced by the Sources Sought Notice*, [USDA] has begun the process of resoliciting the award for National Hunger Hotline support services and is dedicated to fulfilling its statutory obligations." Lucas Decl. ¶ 14, ECF 10-1 at 4 (emphasis added). But the text of the Notice contradicts that assertion. The Notice states that it "is for planning purposes only, and does not constitute an Invitation for Bid, a Request for Proposal, Solicitation, [or] Request for Quote," and that "[t]his notice is not to be construed as a commitment on the part of the Government to award a contract." Notice at 2.[1] It goes on to state that "[t]he information provided herein is subject to change and in no way binds the Government to solicit for or award a competitive contract." *Id.* at 8. And its final paragraph "emphasize[s] that this is a notice for planning and information purposes only and is not construed as a commitment by the Government to enter into a contractual agreement, nor will the Government pay for the information solicited." *Id.* at 9. The Notice is thus clear that USDA has not committed to soliciting or awarding a contract to a qualified nongovernmental organization as required by the School Lunch Act. And neither USDA's opposition memorandum nor the declaration of Chase Lucas attempts to explain (or disavow) that language.

Moreover, the Sources Sought Notice cannot be deemed evidence of intent by USDA to move forward with the statutorily required contract because the Notice is not a required step in the contracting process. Mr. Lucas explains that the Notice is a "synopsis pursuant to Federal

[1] The Sources Sought Notice consists of a posting on SAM.gov (https://sam.gov/opp/ea405bff41ac47328615ea81dcf467bf/view) and an attached nine-page pdf document. References in this brief to specific pages of the Notice are to the pdf document.

Acquisition Regulation Subpart 5.2." Lucas Decl. ¶ 9, ECF 10-1 at 2. That subpart, however, specifies that no synopsis is required if "the proposed contract action—(i) Is for an amount not expected to exceed the simplified acquisition threshold; (ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE [the "government wide point of entry," i.e. SAM.gov, *see* 48 C.F.R. § 2.101]; and (iii) Permits the public to respond to the solicitation electronically." 48 C.F.R. § 5.202(a)(13). On the first requirement, the simplified acquisition threshold is $250,000, 48 C.F.R. § 2.101, and the value of the clearinghouse services contract is capped by statute at $250,000, *see* 42 U.S.C. § 1769g(d). The clearinghouse services contract thus necessarily cannot have a value in excess of the simplified acquisition threshold. On the second and third requirements, USDA's declarant confirms that "a solicitation would be posted to either Sam.gov or GSA e-buy," Lucas Decl. ¶ 13, ECF 10-1 at 3, and all clearinghouse contract solicitations since at least 2014 have been made on SAM.gov, which permits the public to respond electronically, *see* Second Berg Decl. ¶ 2, ECF 11-1 at 1. The Federal Acquisition Regulations thus impose no obligation on USDA to issue the Sources Sought Notice or to delay the bidding process.[2]

Indeed, the Notice suggests that USDA is not committed to complying with its statutory obligations under the School Lunch Act. The Act requires, among other things, that the contractor be "a nongovernmental organization" that is "experienced in the establishment of a clearinghouse

[2] A USDA "Glossary of Government Contracting Terms" also defines a "Sources Sought Notice" as "[a] required market research process performed by the federal government." https://www.usda.gov/about-usda/general-information/initiatives-and-highlighted-programs/small-business/glossary-government-contracting-terms. Federal Acquisition Regulation Subpart 10.001 requires agencies to "[c]onduct market research appropriate to the circumstances," when, among other things, "soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold." 48 C.F.R. § 10.001(a)(2)(ii). Because the clearinghouse contract necessarily will not exceed the simplified acquisition threshold, that provision also cannot avail USDA.

similar to the clearinghouse described in subsection (a)," and is "sponsored by an organization, or [is] an organization, that—(A) has helped combat hunger for at least 10 years; (B) is committed to reinvesting in the United States; and (C) is knowledgeable regarding Federal nutrition programs." 42 U.S.C. § 1769g(b). For more than thirty years, since the inception of the clearinghouse services, USDA has thus consistently awarded the contract to a nonprofit entity dedicated to combatting hunger. *See* Second Berg Decl. ¶¶ 2, 7, ECF 11-1 at 1, 2. That history comports with the statutory purpose of assisting low-income Americans, the detailed statutory requirements, and the ordinary understanding of the term "nongovernmental organization." The Sources Sought Notice, however, seeks information only from "small businesses" in the field of telemarketing. *See* Notice, https://sam.gov/opp/ea405bff41ac47328615ea81dcf467bf/view (specifying "NAICS [North American Industry Classification System] Code 561422 – Telemarketing Bureaus and Other Contact Centers"); Notice at 1 (specifying that responses "must include … Business size for NAICS 561422 with size limitation standards of $25,500,000.00 and status, if qualified as an 8(a) firm (must be certified by the Small Business Administration (SBA), Small Disadvantaged Business (must be certified by SBA), Woman-Owned Small Business, HUBZone firm (must be certified by SBA), and/or Service-Disabled Veteran Owned Small Business (must be listed in the VetBiz Vendor Information Pages)).

USDA offers no explanation for seeking responses only from for-profit telemarketers or for declining to seek responses from other potential providers more likely to satisfy the statutory criteria—such as non-profit organizations dedicated to fighting hunger. And Mr. Lucas suggests that USDA intends to limit bidding on any new clearinghouse contract to for-profit businesses: "a [Contracting Officer] may decide to set the procurement aside for only small businesses based on the results of the Sources Sought Notice. If the market research resulted in no valid and vetted

responses, then the [Contracting Officer] may determine to compete the requirement as a 100% full and open competition (*meaning any large or small business can quote/propose on the solicitation when posted*)." Lucas Decl. ¶ 11, ECF 10-1 at 3 (emphasis added). USDA's focus on for-profit businesses suggests that the Notice does not reflect an effort to award a contract as required by the School Lunch Act—particularly in light of the undisputed fact that the clearinghouse services operate at a significant loss relative to the amount of federal funding at issue. In fact, past USDA requests for clearinghouse proposals encouraged applicants to supplement the contract with additional funds. *See* Second Berg Decl. ¶ 8, ECF 11-1 at 2. And the total cost of operating the clearinghouse services from May 2024 to May 2025 was $671,603, with the difference between total costs and the statutorily capped amount of the contract made up by private fundraising. *See* First Berg Decl. ¶ 16, ECF 6-2 at 6. USDA does not argue that those costs were unreasonable or excessive. Nor could it: USDA rated Hunger Free America's performance under the contract as "satisfactory" in every evaluated category, including "Cost Control," for every rating period since 2014. *Id.* ¶ 19, ECF 6-2 at 7. Moreover, the School Lunch Act expressly requires that the clearinghouse contractor must "agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse." 42 U.S.C. § 1769g(b)(3). That requirement makes sense for the non-profits that have operated the clearinghouse services continuously since their creation in 1994 and have never expected to make money from doing so, *see* Second Berg Decl. ¶ 7, ECF 11-1 at 2, but is incongruous with the notion of operating the services for a profit.

Common sense suggests that there are few if any for-profit small business telemarketers with a ten-or-more-year side-hustle in combating hunger among the lowest-income and most vulnerable Americans, and the many years of experience of Hunger Free America's CEO backs up that intuition. *See* Second Berg Decl. ¶ 9, ECF 11-1 at 2–3. USDA's "market research" notice

thus piles an unnecessary delay on top of its arbitrary decision to end funding for the clearinghouse services. Far from mooting the case, USDA's actions confirm that this Court's intervention remains necessary.

B. USDA is obliged to maintain the clearinghouse services

USDA contends that its decision to terminate funding for the clearinghouse services was not unlawful because "[t]he statute contains no language that the contract must be continuous, that it must never lapse, or that the Agency cannot solicit new bids as it sees fit." ECF 10 at 8. USDA is wrong. The statute requires USDA to enter into a contract to "establish and *maintain*" the clearinghouse services. 42 U.S.C. § 1769g(a) (emphasis added). To "maintain" means "to keep or keep up; to continue in or with; to carry on," and "to keep in existence or continuance." Websters New Twentieth Century Dictionary (2d ed. 1979); *accord* Maintain, dictionary.com/browse/maintain ("to keep in existence or continuance"); *cf Smallwood v. Gallardo*, 275 U.S. 56, 60 (1927) ("To maintain a suit is to uphold, continue on foot and keep from collapse a suit already begun.").

Moreover, as the D.C. Circuit has explained, when a statute or regulation "does not define 'maintain,' it is hardly arbitrary to construe the [statute or] regulation in light of its purpose." *Darrell Andrews Trucking, Inc. v. Federal Motor Carrier Safety Admin.*, 296 F.3d 1120, 1128 (D.C. Cir. 2002). Here, the statute spells out its purpose to "assist low-income individuals or communities regarding food assistance." 42 U.S.C. § 1769g(a). The undisputed record evidence—and common sense—confirms that fulfilling that purpose requires avoiding abrupt and unexplained cuts in service. *See* First Berg Decl. ¶ 37, ECF 6-2 at 11–12.

In other words, the statute requires USDA to maintain continuous service, and it does not give USDA discretion to delay the bidding process at the expense of the tens of thousands of food-insecure Americans who rely on the Hotline. USDA is in breach of that statutory requirement.

C. The Tucker Act does not divest this Court of jurisdiction

Plaintiff's opening memorandum laid out in detail the legal framework governing the division of jurisdiction between district courts and the Court of Federal Claims, including the factors addressed in *Megapulse, Inc. v. Lewis*, 672 F.2d 959 (D.C. Cir. 1982), and the en banc D.C. Circuit's recent endorsement of Judge Pillard's opinion in *Widakuswara v. Lake*, 2025 WL 1521355, at *1 (May 28, 2025), and explained that this case is not a contract action and is not a case over which the Court of Federal Claims could exercise jurisdiction.

USDA addresses none of those arguments in its opposition. Instead, it argues that "to the extent Plaintiff has concerns with the way Defendants are endeavoring to procure the contract, such a complaint would not properly be before this Court," and that "any issues Plaintiff has in connection with Defendants' proposed procurement properly lies outside the Court's jurisdiction." ECF 10 at 11–12. This case, however, plainly is *not* a challenge to USDA's Sources Sought Notice or to its purported efforts to procure a new clearinghouse contract—indeed, that would be impossible, since the Notice came after Plaintiff filed this case and its preliminary injunction motion. This case is, and always has been, a challenge to USDA's unlawful decision to terminate funding for the clearinghouse services. USDA has introduced the Sources Sought Notice into this case in an attempt to argue that the case is now moot, but that effort does not transform the underlying nature of Plaintiff's claims or the relief sought.

D. Plaintiff does not impermissibly seek final relief through a preliminary injunction.

USDA argues that "the relief Plaintiff seeks [in the amended complaint] is the exact relief Plaintiff asks the Court for in its motion for a preliminary injunction," and suggests that to do so is somehow improper. ECF 10 at 7. But "[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally," *De Beers Consol.*

Mines v. U.S., 325 U.S. 212, 220 (1945), and conversely, "[a] preliminary injunction will not be granted when it seeks different relief or when it deals with matters outside the issues in the underlying suit," 11A C. Wright & A. Miller, Federal Practice and Procedure § 2947 (3d ed.). The preliminary relief Plaintiff seeks is thus appropriate and necessary given the nature of its underlying claims.

The cases USDA cites are not to the contrary. In *Dorfman v. Boozer*, 414 F.2d 1168 (D.C. Cir. 1969), the court, in the course of discussing the extent to which "equitable principles … allow the financial hardship of one party to justify so greatly shifting the risk to the other," dropped a footnote stating that "a preliminary injunction should not work to give a party essentially the full relief he seeks on the merits" and that "especially in a suit for money a preliminary injunction should not require that one party turn over money to another." *Id*. at 1173 & n.13. The language USDA quotes is thus best understood to refer to balance of the equities preliminary injunction factor. In any event, this is not a case for money damages and Plaintiff does not seek an order requiring USDA to turn over money.

University of Texas v. Camenisch, 451 U.S. 390 (1981), also cited by USDA, is even less relevant here. In that case, the Supreme Court considered whether an attorney fee award could be based on the plaintiff's success at the preliminary injunction stage, rather than at final judgment, when the injunctive aspect of the case subsequently became moot. *Id*. at 395–96. When the Court observed that "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits," it meant literally what it said: A final judgment entails procedural and evidentiary formalities and protections that do not necessarily obtain at the preliminary injunction stage, so it is generally inappropriate to treat a court's preliminary ruling

on a likelihood of success on the merits as a final judgment. *Id.* That point has no bearing on this case.

To the extent that USDA is concerned that a preliminary injunction could leave it committed to a clearinghouse contract extending beyond a potential final judgment in its favor, that concern is misplaced. USDA does not contest that it must enter into a clearinghouse contract, and there is no realistic prospect of a final judgment relieving it of that statutorily imposed duty.

II. Plaintiff will suffer irreparable harm absent preliminary relief.

Plaintiff's opening memorandum demonstrated that Hunger Free America is suffering irreparable harm to its organizational mission of fighting hunger every day that USDA unlawfully withholds funding for the clearinghouse services—whether to Hunger Free America or to another qualified nongovernmental contractor. *See* USDA, Economic Research Service, Household Food Security in the United States in 2023, at 10 (stating that 47 million Americans live in food insecure households).[3] Although some of that harm is felt in monetary terms, Hunger Free America is also harmed in other ways: its other activities are injured when it diverts resources to keep the Hotline running, and its reputation and relationships with other social service providers are injured too. First Berg Decl. ¶¶ 31, 33, ECF 6-2 at 9–10. And if HFA decides to avoid those injuries by shutting down the clearinghouse services, it must lose the accumulated expertise of Hotline staff and allow permanent damage to the Hotline's reputation for reliability, all of which harms HFA's ultimate mission regardless of which contractor receives the next clearinghouse contract. *Id.* ¶¶ 32, 36–37, ECF 6-2 at 10–12. Such injuries to Hunger Free America's ability "to accomplish its primary mission" are textbook examples of the kinds of "injury for purposes both of standing and

[3] https://ers.usda.gov/sites/default/files/_laserfiche/publications/109896/ERR-337.pdf?v=85112

irreparable harm" that courts routinely recognize. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016).

USDA argues that Hunger Free America's "alleged harms are self-inflicted." ECF 10 at 13. By that, USDA apparently means that after the clearinghouse contract lapsed on May 21, "Plaintiff was relieved of any obligation to continue running the clearinghouse services." *Id.* USDA therefore argues that Hunger Free America's decision to keep the clearinghouse services running "cannot mean that Defendants have inflicted upon it harm, let alone irreparable harm." *Id.* But USDA offers no authority for its capacious understanding of the concept of self-inflicted harm, and its argument is incompatible with precedent.

Organizations routinely secure preliminary relief on the basis of unlawful impairments to their ability to carry out mission-related activities that they are under no legal obligation to undertake. The League of Women Voters, for example, was under no legal compulsion to hold voter registration drives, but it nevertheless secured a preliminary injunction against the Election Assistance Commission's unlawful actions that impaired its ability to do so. *League of Women Voters*, 838 F.3d at 9. Likewise, when the Department of Housing and Urban Development unlawfully delayed implementation of a rule relating to housing vouchers, the Open Communities Alliance was irreparably injured by the illegal delay because it "frustrate[d] OCA's ability to assist voucher holders [to] gain access to greater opportunity in several ways," and the Alliance was thus entitled to a preliminary injunction—regardless of whether it was legally required to provide such assistance. *Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148, 177 (D.D.C. 2017).

Moreover, USDA's argument, if accepted, would drastically curtail the scope of legally cognizable injuries, not just for preliminary injunctions but also for purposes of standing. After all, "self-inflicted injuries … do[] not give rise to standing" any more than they justify a preliminary

injunction. *Clapper v. Amnesty Int'l, USA*, 568 U.S. 398, 418 (2013). If USDA's argument were accepted, it would close the courthouse doors to all manner of organizations challenging unlawful agency actions that harm their missions, not just for preliminary relief, but for all purposes.

The two cases on which USDA relies reveal a much more modest conception of self-inflicted injury, and one that has no relevance to this case. In *Padgett v. Vilsack*, 2024 WL 5283897 (D.D.C Nov. 8, 2024), a bird importer sought a preliminary injunction requiring an agency to issue a permit allowing him to import around 80 birds from the Solomon Islands into the United States, arguing that the birds would "die from over-caging unless he [was] issued a permit." *Id*. at *4. The court denied the injunction because the plaintiff "ha[d] not explained why he caged these birds and prepared them for shipment before obtaining the requisite permit from the United States," and "g[ave] no reason why the birds cannot be held and cared for in the Solomon Islands while he litigates this case and obtains an import permit … through the ordinary process." *Id.* Likewise, in *Safari Club International v. Salazar*, 852 F. Supp. 2d 102 (D.D.C. 2012), the plaintiffs challenged agency actions that rendered certain species of antelope subject to the protections of the Endangered Species Act, arguing that the new requirements impaired their ranching activities. *Safari Club*, 852 F. Supp. 2d at 122-23. But the agency "provided a viable permitting process through which ranchers and other interested parties could have sought permits to continue their activities," and the plaintiffs' failure to seek permits did not constitute the kind of harm sufficient to justify a preliminary injunction. *Id.* at 123. Those cases might be apposite here if Hunger Free America had been the one to terminate the clearinghouse contract, but they have no relevance to the actual facts of this case.

In addition, USDA argues that, "distilled to their core," Hunger Free America's "alleged harms are grounded on monetary damages due to its own choice to continue running the

clearinghouse at its own expense while the government undergoes the process of entering a new contract." ECF 10 at 13. Even if USDA were correct that all of Hunger Free America's injuries can be boiled down to monetary harm, its argument still goes too far. "*Recoverable* monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movants business," *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (emphasis added), but a different analysis applies when monetary losses are not recoverable. *See, e.g.*, *Open Communities Alliance*, 286 F. Supp. 3d at 178 ("OCA's monetary losses, however, are not recoverable, as the APA provides no damages remedy."); *Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 211 (D.D.C. 2012) (stating that, when "the claimed economic loss is unrecoverable (e.g. because the defendant is entitled to sovereign immunity), this is 'one factor the court must consider in assessing the alleged irreparable harm.'" (quoting *Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 53 (D.D.C. 2011))).

In any event, USDA is simply wrong that all of Hunger Free America's harms are monetary. The uncontroverted facts in the record show that Hunger Free America is suffering, and will continue to suffer, injuries to its organizational mission of fighting hunger because of diversion of resources from its other programs to sustain the clearinghouse services, *see* First Berg Decl. ¶¶ 30, 33, and is at imminent risk of needing to shut down the Hotline and lay off its staff with their accumulated expertise, *id.* ¶ 32. Ceasing clearinghouse operations even temporarily would permanently damage the services themselves and their reputation for reliability, which would in turn injure Hunger Free America's ability to fight hunger whether or not it receives the next clearinghouse contract. *Id.* ¶¶ 32, 36-27.

USDA never addresses those organizational, reputational, and personnel harms to Hunger Free America. It does not make any argument to support its contention that these harms are

fundamentally monetary in nature, or address any of the cases treating such harms as sufficient for preliminary injunctive relief. *See, e.g.*, *League of Women Voters*, 838 F.3d at 9. And it does not argue that non-monetary harms of the kind Hunger Free America has demonstrated are somehow legally insufficient for any other reason, or contest the factual basis for Hunger Free America's showing of injury. Hunger Free America suffers irreparable harm every day that USDA is allowed to continue its unlawful defunding of the clearinghouse services, and this Court has the equitable power to prevent that harm.

III. The balance of the equities and the public interest weigh in favor of an injunction.

USDA argues that the balance of the equities and the public interest do not favor an injunction for two reasons. First, it claims that it is likely to prevail on the merits. ECF 10 at 15. Second, it claims that it is entitled to "the widest possible latitude" in administering the clearinghouse contract. *Id.* (quoting *Sampson v. Murray*, 415 U.S. 61, 83 (1974). Neither argument is persuasive.

Hunger Free America, not USDA, is likely to prevail on the merits for the reasons discussed above, and there is "generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters*, 838 F.3d at 12. USDA's plea for administrative latitude is similarly unavailing, given its actions to date and its legal positions in this case. USDA has still never explained why it allowed the clearinghouse contract to lapse without a replacement provider in place or why, more than one month later, it has not begun the contracting process, much less entered into a contract. It has not explained why it is delaying the contracting process to conduct market research on telemarketers, when there is no evidence that any telemarketer could possibly satisfy the statutory criteria for the contract or would even want to in light of the gulf between the costs of operating the clearinghouse and the federal funds available. And USDA still has not committed to soliciting and awarding a contract. *See* Lucas Decl. ¶¶ 13-14, ECF 10-1 at 3–4.

Instead, it asserts that it has the legal discretion to allow the clearinghouse services to lapse indefinitely, despite the clear statutory command to "maintain" the services. 42 U.S.C. § 1769g(a). In short, USDA's conduct and filings in this case show that this is not "a contract process that Defendants have shown they are perfectly capable of undertaking on their own." ECF 10 at 11.

Finally, USDA does not even acknowledge the public interest most acutely affected by this case, namely, the interest of the tens of thousands of low-income Americans who rely on the clearinghouse services to help feed themselves and their families. *See* First Berg Decl. ¶¶ 11, 14. They are the ones who will suffer the most from USDA's unlawful decision to terminate funding for the clearinghouse services and its inexplicable failure to enter into a new contract.

IV. The Court should exercise its discretion not to require a bond.

USDA asks this Court to require "an appropriate bond commensurate with the scope of any injunction." ECF 10 at 16 (quoting *DSE, Inc. v. United States*, 169 F.3d 21,33 (D.C. Cir. 1999). But Rule 65(c) requires "security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). USDA does not offer any suggestion as to the proper amount of any bond, and its arguments foreclose the possibility that the requested relief could impose any cognizable costs and damages on USDA.

Although the parties differ on the urgency of USDA's duty to comply with the School Lunch Act, USDA does not appear to dispute that it must *eventually* award a contract consistent with the Act. *See* ECF 10 at 10 ("A final award would be consistent with the requirement in Section 26 of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1769g), including the requirements for a qualifying nongovernmental organization."); Lucas Decl. ¶ 15, ECF 10-1 at 4 (same). USDA thus will eventually have to incur the costs of soliciting and awarding a contract, and it will have to pay the congressionally appropriated amount under the contract. An injunction

requiring USDA to carry out what it does not (and cannot) dispute is its duty does not impose on it any costs or damages. *See, e.g.*, *Fed. Prescription Serv., Inc. v. American Pharm. Ass'n*, 636 F.2d 755, 759 (D.C. Cir. 1980) ("Courts interpreting [Rule 65(c)] have concluded the district court has the power not only to set the amount of security but to dispense with any security requirement whatsoever when the restraint will do the defendant 'no material damage.'" (quoting *Urbain v. Knapp Bro's Mf'ing Co.*, 217 F.2d 810, 816 (6th Cir. 1954)).

If the Court were nonetheless to conclude that a bond was necessary, the Court should exercise its discretion to award a nominal bond of $1 in light of USDA's failure to identify any way in which an injunction would impose any costs or any damages on it. *See, e.g.*, *J.G.G. v. Trump*, -- F. Supp. 3d --, 25-cv-766 (JEB), 2025 WL 1577811, at *31 (D.D.C. June 4, 2025).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court issue a preliminary injunction requiring USDA to enter into a contract with a nongovernmental organization to establish and maintain the information clearinghouse services required by the School Lunch Act.

Dated: July 6, 2025

Respectfully submitted,

/s/ Cormac A. Early
Cormac A. Early (DC Bar No. 1033835)
Allison M. Zieve (DC Bar No. 424786)
Adina H. Rosenbaum (DC Bar No. 490928)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiff